

## SENIOR INFORMATION & ASSISTANCE

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### Guardianship and Alternatives

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Guardianship is a legal process intended to protect and assist someone who is unable to provide for his or her own health and safety as determined by the court. Guardians are court-appointed, court-supervised, and have the power to make decisions in the best interest of that person.

Guardianship is initiated when someone petitions the superior court, usually a concerned family member or friend, sometimes a professional. The court appoints a “guardian ad litem” to investigate the situation and report their findings to the court. The court then decides whether the person is incapacitated and needs a guardian, and who that should be. A person can have *full guardianship*, which includes all decisions the law allows, or *limited guardianship*, which grants only specific decision-making rights.

Guardianship should be considered a last resort because it may cause a person to lose very significant rights, such as the right to: vote, hold office, drive, marry, divorce, buy, sell, own, mortgage or lease property, enter into or revoke legal documents, sue or be sued (other than through guardian) and make medical, social, or personal care decisions. It is also costly and includes procedural detail that usually must be handled by an attorney.

A guardian must be 18 years of age or older, of sound mind, free from felony convictions and certain misdemeanors, and a resident of the State of Washington. A professional guardian is sometimes used when there are no family members or concerned parties available. Professional guardians charge fees, must be bonded, and are subject to an annual accounting to the court.

A complete list of professional guardians registered to serve Whatcom County can be found at [www.courts.wa.gov/programs\\_orgs/guardian](http://www.courts.wa.gov/programs_orgs/guardian). If you do not have access to the internet, please call Senior Information and Assistance for a current list.

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### Preventing Guardianship

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Because guardianship should be considered a last resort, advance planning is important. There are a variety of legal and practical tools available. Arranging for financial and healthcare decision-making authority in advance can be simple. It will avoid some of the confusion and distress for family members or caregivers.

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## Preventing Guardianship-continued

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### Durable Power of Attorney

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A Durable Power of Attorney is a very powerful document and does not require the court procedure that a guardianship does. If the Power of Attorney does not contain the term “durable” then it becomes ineffective if the person who granted it becomes incompetent. Durable Power of Attorney documents remain in effect upon the person’s incapacity. Durable Power of Attorney documents, like guardianships, can be limited or all inclusive. Some people appoint separate representatives for their healthcare and finance decisions.

### Living Will / Advance Directive

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A Living Will is a legal document that indicates to your doctor and family the medical treatments you want. Because of your illness or injury, you may not be able to state your preference about end-of-life treatments. At those times, your doctor and your family may need clarification about your treatment preferences. Many people plan for this situation by implementing a Living Will, also known as an Advance Directive.

### Joint Property Arrangements

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Joint Property Arrangements are a more informal method of planning for incapacity. Examples include community property agreements and joint bank accounts. This method can work out fine, however; it is important to realize the potential problems associated with it. For instance, if a person adds a relative’s name to a bank account to provide convenience in managing finances, it may not be clear that the person did not intend to transfer ownership of the account. Thus, if the relative has creditors, dies, or dissolves a marriage, the funds may be treated as belonging to that relative. Transferring an interest in real estate to a relative incurs similar risks.

### Trusts

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A trust is an arrangement in which the grantor transfers money to a neutral party, or trustee, who is required to manage it for certain named beneficiaries or the grantor, himself. A trust is not practical for persons with limited or insignificant assets. The advice of an attorney is recommended in the development of trusts.

For further information about legal issues, ask for any of the following Senior Information Library handouts:

- Advice from the Attorney General Regarding Living Trusts
- Attorneys Specializing in Elder Law
- Durable Power of Attorney : General Information
- Durable Power of Attorney for Healthcare
- What is an Advance Directive or Living Will?